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RUEHBS/AMEMBASSY BRUSSELS PRIORITY 0057
RUEHBY/AMEMBASSY CANBERRA PRIORITY 2273
RUEHLO/AMEMBASSY LONDON PRIORITY 0407
RUEHOT/AMEMBASSY OTTAWA PRIORITY 0549
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RUEHKO/AMEMBASSY TOKYO PRIORITY 3143
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SENSITIVE
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SUBJECT: CAMBODIAN BAR ASSOCIATION SAYS TO ECCC: SHOW ME
THE MONEY

¶1. (U) On Friday, March 16, the Review Committee of the Extraordinary Chambers in the Courts of Cambodia (ECCC) issued a press statement announcing that they had resolved all the remaining disagreements between the Cambodian and international judges, although the statement noted that additional fine tuning remains to be done. The international judges, however, refused to agree to the scheduling of a second plenary at the end of April, pending resolution of a dispute with the Cambodian Bar Association (CBA) over international defense lawyer fees. The timetable for finalizing agreement of the internal rules and moving the first case forward from the prosecutors to investigating judges in May is now in jeopardy.

¶2. (U) The Cambodian judges on the review committee disputed the international judges' decision, claiming that the fee schedule matter is outside the internal rules discussion, and should not hold up the next plenary session. The Cambodian judges inserted a reference in the press statement highlighting their disagreement over this point with the international judges. The Bar Association President Ky Tech maintains that the fees are not high and accused the international judges of not wanting to go ahead with the trials. Ky Tech has told the media that the international defense lawyers will make as much as \$1,000 per day; Rupert Skilbeck (whose office will pay the salaries of defense counsel -- both foreign and Cambodian -- says that the pay scale is on par with a P5 Deputy Prosecutor; i.e., less than at other tribunals and does not amount to \$1,000 per day.

¶3. (U) The Bar Association has stipulated that any international judge wishing to be eligible to defend a Cambodian client before the ECCC must pay a \$500 membership application fee to the Bar; if selected, the lawyer would pay a one-time fee of \$2,000 followed by a \$200 monthly fee. In contrast, a Cambodian lawyer pays a \$200 fee to be placed on the eligibility roster, and a \$30 monthly fee thereafter. Rupert Skilbeck, the ECCC's Principal Defender, notes that the only other international tribunal with lawyer fees to an outside organization, the International Criminal Tribunal for the Former Yugoslavia (ICTY), has significantly lower fees. There, the annual fee is \$159 to a legal defense counsel group, with monthly fees of \$40 in the pre-trial and appeal stages, and \$79 per month during the trial phase. The international judges have tasked Skilbeck's office with negotiating the fee schedule with the CBA.

14. (SBU) The international judges reportedly worry that an unnecessarily high fee schedule will discourage many international lawyers from considering work at the ECCC, and the pool of qualified defense lawyers willing to defend Cambodian indictees will narrow considerably. With a smaller pool of lawyers to draw upon, the international judges are concerned over an "inequality in arms" and defendants' right to a fair trial may be called into question -- particularly in the appeal stage. International judges reportedly want CBA fees to be limited to covering actual administrative costs; what is being asked, they say, is far in excess of normal administrative fees. Skilbeck agrees, as his office will do most of the administrative work normally done by a country's bar association. Human rights NGOs reportedly are considering a joint press statement calling for the Bar Association to stand down on its proposal. The NGOs also are worried that the fee schedule will impede victims' groups from becoming civil parties, as fewer lawyers will likely be willing to take on such cases.

15. (SBU) Comment. Despite the controversy over defense fees, the international judges reportedly are holding the dates from the end of April into the first week of May open in the hopes that the issue will be resolved. We have also heard, but cannot confirm, that the international judges may raise the issue with UN New York if the CBA does not back down on its proposal. Most sources have indicated that the CBA proposal is exorbitant because the group has not been able to receive international assistance due to previous internal disputes over its election process. Therefore, Ky Tech is looking to make as much as possible in the course of the ECCC trials, so the logic goes. One of the proposed draft rules reportedly excludes the Bar Association from participation in ECCC matters. If this is true and once it

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is made public, the Bar Association is likely to react negatively, as Ky Tech has continued since the November 2006 plenary to carve out a significant role for the Bar on defense issues. End Comment.
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